IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2110 OF 1992.

Shri Chintaman Bhikaji Parlikar,]
age about 69 years, Occ: retired,]
Residing at 123 A, Shaniwas Peth,]
Nene Ghat, Pune - 30.] .. Petitioner

Vs

Shri Ganesh Bhaskar Dixit,]
age about 71 years, Occ: Priest,]
residing at 123 A, Shaniwar Peth,]
Nene Ghat, Pune - 30.] .. Respondent

Mr. Amogh P. Paralikar i./b B.R. Pathak for the petitioner.

None for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 14TH JULY, 2005

ORAL JUDGMENT. :

1. The petitioner is the landlord and the respondent is a tenant. The premises is situated in Shaniwar Peth, Pune. The respondent is tenant in respect of an area of 5 rooms admeasuring about 16 Khans and a bathroom on the ground floor in the said premises. The respondent-tenant has been paying monthly rent of Rs.8/- which is exclusive of education cess. The

petitioner is residing in the suit building on the first floor and attic.

2. Sometime in the year 1961, some part of the suit premises collapsed and was washed away due to Panshet floods. The Pune Municipal Corporation demolished the dangerous structures from time to time and ultimately, the respondent-tenant at present is residing and using the 7 Khans in the suit premises. The tenancy is for residential purpose only. The Municipal Corporation, by its Notice dated 3rd October, 1977, directed the landlord-petitioner to demolish the dilapidated portion of the building which is in occupation of the petitioner. After demand notice, the petitioner-landlord filed Suit No.2285 of 1983 against the respondent-tenant for eviction on the grounds of default, change of user, nuisance and bonafide requirement, in the Small Causes Court, Pune (Trial Court). The evidence was led by the parties. The learned Trial Judge, after considering the material on the record, decreed the suit to the extent of possession of 9 Khans i.e. collapsed portion. All other grounds were rejected. Both the parties, therefore, preferred Appeal before the District Judge, Pune (Appellate Court). The learned Appellate Court, after considering the rival contentions between the parties, allowed the

Appeal of the respondent-tenant and dismissed the cross Appeal filed by the petitioner-labndlord. In the result, the suit for possession filed by the petitioner was dismissed in toto. Therefore, the present Petition by the petitioner-landlord.

3. Heard learned counsel Mr. Amogh Paralikar appearing for the petitioner. The matter was called out on 23/6/2005, 30/6/2005, 4/7/2005, 7/7/2005 and now today. None appeared for the respondent on all the above dates. The learned Appellate Court, while rejecting the case of the landlord on the ground of bonafide use, observed as under:

> "The cross-objections taken by the respondent plaintiff are in respect of is No.2 and 3 which is for reasonable land bonafide requirement for the use and occupation to the respondent-plaintiff and comparative hardship. The learned trial judge has given the finding to issue Nos.2 and 3 in the negative. He has observed that there are 5 members in the family of the defendant-appellant, i.e. he himself, his wife, his son, daughter and daughter in law and one grand child. In the family of the plaintiff respondent he himself his wife, his mother, 4 sons, 3 daughters-in laws, 2 grand sons and one married son are living. It is evident that the condition of the suit house has become dangerous due to panshet floods in 1961. Corporation has issued the notices for repairs of the suit property. It has come in evidence that the respondent plaintiff is in occupation of 4 rooms, one hall and attic.

> There is no ground for the plaintiff-respondent that he wants the suit premises for his own use and occupation reasonably and bonafide because he is already in possession of four rooms, one hall and attic."

4. I am of the view that the above findings by themselves are sufficient to consider the case of the landlord as, the condition of the premises which is in occupation of the landlord is in a dilapidated condition and the Municipal Corporation has already issued notice to demolish the basic portion of the premises, then there is no reason to discard the case of the landlord of bonafide requirement. Considering the notice of the Municipal Corporation, read with the condition of the building in which the landlord is residing, in my view, the landlord has made out sufficient ground to demand the premises for his own bonafide use and occupation. The Appellate Court further was wrong in holding that there was no ground for the plaintiff-landlord that he wants the suit premises for his own use and occupation as he has already in his possession, four rooms, one hall and the attic. One additional facet which goes in favour of the landlord is that admittedly at the relevant time, the landlord’s family members consisted of himself, his wife, his mother, four sons, three daughters in law, two grand sons and one unmarried son

and he is in possession of the portion of the dilapidated building consisting of four rooms, one hall and attic.

5. In my view, therefore, the issue of greater hardship also tilts in favour of the landlord. It is difficult for anybody to insist that the landlord should live in such dilapidated building or portion thereof, specially when his own building is in possession of the tenant.

6. Considering the above reasons and undisputed position on the record, I am inclined to interfere with the finding given by the Courts below. The reasoning given by the Courts below appears to be unreasonable and contrary to the settled principle of law in respect of landlord-tenant relationship and also contrary to the record itself. The Apex Court has already laid down the basic foundation which should be taken note of while considering the bonafide need of the landlord and the comparative or greater hardship. Taking into consideration those principles, as well as, the record of the present case, according to me, both the Courts below were wrong in dismissing the bonafide need of the petitioner-landlord.

7. So far as the other grounds are concerned, including default and change of user, I see thee is no material to support the case of the petitioner. The reasoning given by the Courts below, based on the evidence on the record, appears to be correct. I am not interfering insofar as that aspect of the default and change of user is concerned. Merely because the tenant is using some portion for gardening, that itself cannot be said to be change of user. However, without going further into that controversy, as I am convinced that in the present case, the landlord has made out a case of bonafide need, I am passing the following Order:

O R D E R:

. The Writ Petition is allowed.

. The impugned judgment and order dated 20th February, 1992, passed by the Appellate Court is set aside. The Suit of the petitioner-plaintiff is allowed for possession of the property as described in paragraph 1 of the Plaint. The petitioner is entitled to the future mesne profits determined from the date of filing of the suit till recovery of possession of the premises under Order XX, Rule 12(1)(c) of the Code of Civil Procedure.

. Rule made absolute. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]